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REPORT TO
THE CONGRESS OF THE UNITED STATES



UNAUTHORIZED USE OF
MANAGEMENT AND INVESTIGATIONS OF RESOURCES FUNDS
FOR NEW CONSTRUCTION

BUREAU OF SPORT FISHERIES AND WILDLIFE
UNITED STATES FISH AND WILDLIFE SERVICE
DEPARTMENT OF THE INTERIOR



BY
THE COMPTROLLER GENERAL
OF THE UNITED STATES

SEPTEMBER 1966.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-114841

SEP 22 1966

To the President of the Senate and the
Speaker of the House of Representatives

The General Accounting Office has made a review of the use of funds appropriated for management and investigations of resources by the Bureau of Sport Fisheries and Wildlife, United States Fish and Wildlife Service, Department of the Interior. Our findings regarding the unauthorized use of these funds to finance new construction are summarized in this letter and are presented in more detail in the accompanying report.

Our review showed that the Bureau had improperly used about \$296,000 of management and investigations of resources funds to construct a new National Fish Control Laboratory at Warm Springs, Georgia, and a number of smaller buildings and projects in the Bureau's Region 3 which is headquartered in Minneapolis, Minnesota. This situation occurred because Bureau officials incorrectly interpreted the administrative provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and the annual appropriation acts as authorizing the use of management and investigations of resources funds for construction purposes. As a result, the Bureau undertook the construction of new and separate buildings and facilities without requesting specific construction appropriations from the Congress as required by 41 U.S.C. 12. The Bureau's actions also violated the provision of the Anti-Deficiency Act (31 U.S.C. 665(a)) which prohibits an officer or employee from involving the Government in any contract or other obligation for the payment of money in advance of appropriations made for that purpose.

In March 1966 the Department of the Interior advised us that it could not conclude that any conscious violation of 31 U.S.C. 665 had occurred. It agreed, however, that the Bureau's interpretation of the availability of management and investigations of resources funds for incidental construction within defined limits should be the subject of specific congressional expression on a current basis and stated that efforts were being made to obtain such an expression. The Department's comments are given recognition in this report.

In the absence of a clear showing that the Congress intended that management and investigations of resources funds be used for construction of the Warm Springs National Fish Control Laboratory and various buildings and projects in Region 3, we have no alternative but to conclude that the Bureau's actions, whether conscious or not, did violate the provisions of 41 U.S.C. 12 requiring that construction funds be specifically appropriated therefor and of 31 U.S.C. 665(a) which prohibits involving the Government in any contract or other obligation for the payment of money in advance of appropriations made for that purpose. Accordingly, the Secretary of the Interior should take the necessary action in accordance with the requirements of 31 U.S.C. 665(i) to report through the Director, Bureau of the Budget, to the President and to the Congress all pertinent facts relating to the violations of the Anti-Deficiency Act.

We believe that the Bureau's efforts to obtain specific congressional expression on the availability of management and investigations of resources funds for construction purposes should, in the future, help to avoid the improper use of such funds for construction purposes. In this regard, we are recommending that the Secretary of the Interior require the Director of the Bureau, in order to provide for more orderly funding of future construction projects, to establish clear-cut guidelines regarding the extent to which project funds can be used for incidental construction and to stress the need for obtaining specific construction funds for all construction work which does not clearly fall within the established guidelines.

We are reporting this matter to the Congress in accordance with the requirement of the Budget and Accounting Act, 1921 (31 U.S.C. 53(c)), which provides that the Comptroller General shall report to the Congress every expenditure or contract made by any department in violation of law, and to inform the Congress of the actions taken by officials of the Department of the Interior when these matters were brought to their attention.

B-114841

Copies of this report are being sent to the Director, Bureau of the Budget, and to the Secretary of the Interior.

A handwritten signature in cursive script, reading "James B. Axtell".

Comptroller General
of the United States

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REPORT ON
UNAUTHORIZED USE OF
MANAGEMENT AND INVESTIGATIONS OF RESOURCES FUNDS
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BUREAU OF SPORT FISHERIES AND WILDLIFE
UNITED STATES FISH AND WILDLIFE SERVICE
DEPARTMENT OF THE INTERIOR

INTRODUCTION

The General Accounting Office has made a review of the use of funds appropriated for management and investigations of resources by the Bureau of Sport Fisheries and Wildlife, United States Fish and Wildlife Service, Department of the Interior, to finance construction expenses. This matter came to our attention during a survey of financial activities in which we noted that funds appropriated for management and investigations of resources had been used to pay expenses under two contracts for the construction of laboratory facilities. Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Our review was carried out principally at the Bureau's regional offices located in Minneapolis, Minnesota (Region 3), and Atlanta, Georgia (Region 4). We reviewed the laws and regulations pertaining to the organization and functions of the Bureau of Sport Fisheries and Wildlife, the Department of the Interior and Related Agencies Appropriation Acts for fiscal years 1960 through 1965, and the related congressional hearings and reports. We examined construction contracts and disbursement documents at the Region 3 office in Minneapolis and records pertaining to the construction of

the Warm Springs National Fish Control Laboratory at the Region 4 office in Atlanta. We discussed matters pertinent to our review with appropriate Bureau officials. Since our review was directed primarily to this one aspect of the Bureau's operations, the matters discussed in this report should not be considered typical of the overall operation of the Bureau.

The principal officials of the Department of the Interior, the United States Fish and Wildlife Service, and the Bureau of Sport Fisheries and Wildlife responsible for the administration of the activities discussed in this report are listed in appendix I.

BACKGROUND INFORMATION

GENERAL

The Bureau of Sport Fisheries and Wildlife was created as a separate entity in the overall reorganization of the United States Fish and Wildlife Service, as authorized by the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.). Under this act, the Bureau is responsible for the development, advancement, management, conservation, and protection of the nation's sport fisheries and wildlife resources. To carry out its responsibilities, the Bureau conducts research, investigations, and studies; furnishes information through periodical reports to the general public; and performs various other services.

The Bureau annually receives appropriations for management and investigations of resources, construction, general administrative expenses, and certain other purposes. This report is concerned primarily with the Bureau's use of funds appropriated for the management and investigations of resources for new construction purposes. In fiscal year 1966, the Bureau received appropriations totaling about \$36.8 million for the management and investigations of resources and \$18.3 million for construction.

PURPOSE OF ANNUAL APPROPRIATIONS FOR CONSTRUCTION AND FOR MANAGEMENT AND INVESTIGATIONS OF RESOURCES

In support of requests for construction appropriations, the Bureau annually submits to the Congress an estimate of the funds required, which is supported by a listing of the specific projects to be undertaken, including information on the cost of each project. The annual appropriation of funds for construction purposes is based on designated approved projects to be undertaken during the fiscal year.

The Department of the Interior and Related Agencies Appropriation Acts for fiscal years 1960 through 1965, regarding construction funds for the Bureau, provided:

"For construction and acquisition of buildings and other facilities required in the conservation, management, investigation, protection, and utilization of sport fishery and wildlife resources, and the acquisition of lands and interests therein, ***."

The necessity for a construction appropriation based on specific projects, for the most part, has stemmed from the provisions of section 3733 of the Revised Statutes which state regarding the construction of public buildings:

"No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose." (41 U.S.C. 12)

The Attorney General has ruled that the object of this section is to prevent executive officers from involving the Government in expenditures or liabilities beyond those contemplated and authorized by the Government (1895, 21 Op. Atty. Gen. 244).

The largest of the annual appropriations requested by the Bureau for program operations is for management and investigations of resources. The Department of the Interior and Related Agencies Appropriation Acts for fiscal years 1960 to 1965, regarding this appropriation, with only minor variations from year to year, have provided:

"For expenses necessary for scientific and economic studies, conservation, management, investigation, protection, and utilization of sport fishery and wildlife resources, except whales, seals, and sea lions, and for the

performance of other authorized functions related to such resources; operation of the industrial properties within the Crab Orchard National Wildlife Refuge (61 Stat. 770); maintenance of the herd of long-horned cattle on the Wichita Mountains Wildlife Refuge; purchase or rent of land, and functions related to wildlife management in California (16 U.S.C. 695-695c); and leasing and management of lands for the protection of the Florida Key deer; ***."

Although the appropriations for management and investigations of resources provide "for expenses necessary," the Comptroller General has ruled that phrases such as this refer to current and running expenses of a miscellaneous character incidental to and directly related to the agency's particular functions and do not include expenses for the construction and improvement of public buildings for which specific statutory authority is required under 41 U.S.C. 12 (38 Comp. Gen. 758).

FINDING AND RECOMMENDATION

UNAUTHORIZED USE OF MANAGEMENT AND INVESTIGATIONS OF RESOURCES FUNDS FOR NEW CONSTRUCTION

From January 1, 1960, through December 31, 1964, the Bureau of Sport Fisheries and Wildlife improperly used about \$296,000 of management and investigations of resources (MIR) funds to construct a new National Fish Control Laboratory at Warm Springs, Georgia, and various other buildings and projects in Region 3. The improper use of MIR funds occurred because Bureau officials incorrectly interpreted the administrative provisions of the Fish and Wildlife Act of 1956 and the annual appropriation acts as providing authority to use MIR funds for construction purposes. As a result, the Bureau undertook the construction of new and separate buildings and facilities without requesting specific construction appropriations from the Congress as required by 41 U.S.C. 12. The Bureau's actions also violated the provision of the Anti-Deficiency Act (31 U.S.C. 665(a)) which prohibits an officer or employee from involving the Government in any contract or other obligation for the payment of money in advance of appropriations made for that purpose.

Construction of the National Fish Control Laboratory, Warm Springs, Georgia

From July 1, 1961, through December 31, 1964, the Bureau improperly used about \$185,000 of MIR funds for construction of a new fish control laboratory at Warm Springs, Georgia. The Bureau did not disclose to the Congress its planned use of MIR funds for new construction purposes and did not request specific construction funds from the Congress as required by 41 U.S.C. 12 until the time of the fiscal year 1964 appropriation hearings when funds were requested to complete supplemental construction work at the laboratory.

During recent years, the Bureau has placed in operation two fish control research laboratories, one at La Crosse, Wisconsin, and the other at Warm Springs, Georgia. The Bureau converted existing fish cultural facilities at the La Crosse National Fish Hatchery into a laboratory by using for the most part construction funds appropriated by the Congress during fiscal years 1959 through 1961 for that specific purpose. In fiscal year 1962, the Bureau initiated construction of the Warm Springs Laboratory on four acres of land made available by the Bureau's Warm Springs National Fish Hatchery. The land on which the laboratory is located is adjacent to the hatchery but is physically separated from the hatchery by Georgia State Highway No. 41.

In addition to being physically separated from the hatchery, the Warm Springs Laboratory is under the direction of the Bureau's Division of Fishery Research and therefore receives program supervision from the Bureau's Central Office and from the Chief of the La Crosse Laboratory in his capacity as coordinator for all fish control research. On the other hand, the hatchery is under the direction of the Bureau's Division of Fish Hatcheries and receives supervision from the Bureau's regional office located in Atlanta, Georgia. Consequently, the laboratory and the hatchery are also organizationally separated.

During appropriation hearings for fiscal years 1962 and 1963, the Bureau neither requested construction funds for the Warm Springs Laboratory nor informed the Congress of its intention to construct a completely new and separate facility. Instead, the Bureau during these years used MIR funds to finance the construction of two laboratory buildings, a storage building, and allied facilities and to remove an existing water-control structure. For fiscal

year 1964, the Bureau requested and received construction funds to complete supplemental construction works at the laboratory, including a tank slab, a booster pump pit, and other items. In addition, the Bureau used a small amount of fiscal year 1965 MIR funds to pay engineering services which were rendered in connection with the supplemental construction work.

The total cost of all facilities constructed at the laboratory site was about \$249,000, of which about \$185,000 was financed from funds appropriated for management and investigations of resources, as follows:

<u>Expenditure for</u>	<u>Amount of MIR appro- priated funds used</u>	<u>Date of contract</u>	<u>Charged to appro- priation for fiscal year</u>
Construction of a laboratory building and allied items	\$ 94,512 ^a	5-24-62	1962
Removal of water-control structure and compacted earth fill	10,552	4- 4-63	1963
Construction of a wet laboratory building, storage building, and allied items	78,863	6-21-63	1963
Engineering services in connection with contract	<u>1,436^b</u>	5- 6-64	1965
	<u>\$185,363</u>		

^aAn additional \$6,443 of Federal Aid in Fish Restoration and Management funds was used to pay for this contract.

^bThe engineering services were incurred in connection with a contract dated May 6, 1964, for the construction of a tank slab, a booster pump pit, curbing, drains, and other allied items. The remaining costs of that contract and other related work amounted to \$57,593 and were paid for from construction funds which were appropriated for fiscal year 1964.

The first reference that we found to research on fish control methods at Warm Springs was contained in Senate Report 294, Eighty-seventh Congress, first session, page 15, on the Interior Department and Related Agencies Appropriation Bill for 1962, which showed that the Senate Committee on Appropriations had increased the Bureau's budget estimate for MIR funds in the amount of \$210,000 for "Study of methods of eliminating undesirable fish from streams and lakes in the southeastern part of the United States." Conference Report 797, Eighty-seventh Congress, first session, page 7, showed that the amount for the study was reduced by the conferees to \$105,000 for fiscal year 1962.

In the 1963 appropriation hearings held on January 23, 1962, before the Subcommittee on Department of the Interior and Related Agencies of the House Committee on Appropriations, the Bureau, in its budget justifications, described the fish control work at Warm Springs as:

"*** sharing space and extending facilities at the Warm Springs National Fish Hatchery in Georgia for the expanded activity to consider new methods of control of warm water nuisance fish populations."

Moreover, in the fiscal year 1963 appropriation hearings held on March 2, 1962, before the Subcommittee on Interior Department and Related Agencies of the Senate Committee on Appropriations, an Assistant Director of the Bureau, when asked what progress was being made on research on eliminating undesirable fish in the southeastern portion of the United States, replied that the work had been located in Warm Springs, Georgia, and that:

"Warm Springs is also a fish hatchery, but the facilities were such that we could expand them somewhat in order to accommodate this work. During the past year we have been primarily concerned with getting our facilities ready."

This actually is a part of a research project on the same type of problem located at La Crosse, Wis.

"In reply to your other question, last year we estimated that it would require \$210,000 annually to properly pursue the fish control work. Congress appropriated one-half of that amount, and we would need the other \$105,000 to get it in full operation."

Subsequently, Senate Report 1490, Eighty-seventh Congress, second session, page 15, on Interior Department and Related Agencies Appropriation Bill, 1963, included in MIR funds the amount of \$105,000 for "Increased fish control research in waters of the Southeastern United States ***" and this amount was included in the fiscal year 1963 appropriation act passed by the Congress.

We noted that, in contrast to the statements made during appropriation hearings that facilities at the Warm Springs Hatchery would be expanded to accommodate the fish control research work, an internal Bureau memorandum dated May 8, 1962, from the Chief of the La Crosse Laboratory to the Regional Director, Region 3, indicated the Bureau's intention to construct a new laboratory facility at Warm Springs. The memorandum stated that the \$105,000 appropriated for fiscal year 1962 would be spent for a laboratory building and that nearly one half of the funds appropriated for fiscal year 1963 would be used to construct a holding house and a paint-oil-chemical storage house and to expand water supplies. The memorandum further indicated that the laboratory and full facilities would not be ready for occupancy until sometime in fiscal year 1964.

During the fiscal year 1964 appropriation hearings held on January 31, 1963, before the Subcommittee on Department of the

Interior and Related Agencies of the House Committee on Appropriations, the Bureau was asked for a list of research laboratories and facilities and their total costs and of new construction contemplated in the next 5 years. The Bureau submitted a report to the Subcommittee which included information on the Warm Springs Laboratory as follows:

"(c) Cost of Laboratory:	
To 1963 - - - - -	\$100,000
1964 budget - - - - -	- - - - -
Planned, 1965-69 - - - - -	<u>- - - - -</u>
Total - - - - - \$100,000"	

The above information is in contradiction to the statements made by the Chief of the La Crosse Laboratory in his internal memorandum of May 8, 1962, that the \$105,000 allotted for Warm Springs in fiscal year 1962 would be used for a laboratory building and nearly one half of the funds for fiscal year 1963 would be used to construct a holding house and a storage house and to expand water supplies. Consequently, it appears that Bureau officials should have known in January 1963 that the laboratory was to cost considerably more than \$100,000. Final cost of the laboratory exceeded \$249,000.

Further reference to fish control research at Warm Springs is found in the 1964 appropriation hearings held on March 7, 1963, before the Subcommittee on Department of the Interior and Related Agencies of the Senate Committee on Appropriations. During the hearings, the Subcommittee Chairman asked an Assistant Director of the Bureau to give a brief statement of the physical facility needs at the Fish Control Laboratory at Warm Springs, Georgia. The Assistant Director filed a statement which indicated that the funds

provided in fiscal years 1962 and 1963 had rapidly advanced the program and that research was under way and extension of facilities was in progress.

During the hearings, the Bureau requested \$72,000 in construction funds for a supplemental water supply, outdoor fish-holding troughs and allied items, but otherwise did not advise the Subcommittee that initial construction of a laboratory building and other facilities had been completed with the use of MIR funds.

In response to our questions regarding the Bureau's authority to use MIR funds to finance the construction of new and separate buildings and related facilities at Warm Springs, we were provided with a copy of a memorandum prepared by the Bureau's Assistant Director, Administration, which stated that the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-j) authorized the Bureau to conduct broad research work on the sport fisheries and wildlife resources, including basic authorization as required by 41 U.S.C. 12, for the construction of research facilities such as laboratories to carry on its research work. The memorandum also indicated that additional authority was contained in the administrative provisions of the annual appropriation acts and stated:

"The Administrative Provisions applicable to the Fish and Wildlife Service in the Department of the Interior and Related Agencies Appropriation Acts for fiscal years 1962 and 1963 provides that 'Appropriations and funds available to the Fish and Wildlife shall be available for ... the maintenance and improvement of aquaria, buildings, and other facilities under the jurisdiction of the Fish and Wildlife Service and to which the United States has title, and which are utilized pursuant to law in connection with management and investigation of fish and wildlife resources.' This provision applies to the appropriation for 'Management and Investigations of Resources.' The

facility improved was the Warm Springs (Georgia) National Fish Hatchery."

In order to further clarify the Bureau's position, we discussed the memorandum with the Bureau's Assistant Director, Administration, who informed us that MIR funds had been used to build the Warm Springs Laboratory as an extension of existing facilities at the Bureau's Warm Springs Fish Hatchery. He reemphasized that the use of these funds for construction was authorized because the research authorization carried with it implied authorization for the construction of research facilities. He also stated that the MIR appropriation was considered to be authority for new construction on an established facility even though MIR funds were not normally used for this type of construction.

We disagree with the position taken by the Assistant Director, Administration, that the broad research authorization contained in the Fish and Wildlife Act of 1956 includes the basic authorization as required by 41 U.S.C. 12 for the construction of research facilities. We found no specific authority in this act which would authorize the use of funds appropriated for management and investigations of resources for the construction of new and separate buildings and facilities. In addition, the provisions of 41 U.S.C. 12 require that a specific appropriation be made by the Congress before any contract is entered into for the erection, repair, or furnishing of any public building, or for any public improvement.

We disagree also with the statement of the Assistant Director, Administration, that the work performed at the Warm Springs Laboratory was the improvement of an existing facility at the hatchery and that the appropriation acts for fiscal years 1962 and 1963 provided for the use of MIR funds for this purpose. Although the

administrative provisions of the appropriation acts authorize the use of MIR funds for maintenance and improvement of aquaria, buildings, and facilities, the acts do not provide authorization for the construction of a new facility such as was accomplished at the Warm Springs Laboratory.

We believe that the physical and organizational separation of the Warm Springs Laboratory from the Hatchery and the nature of the construction work necessary to place the laboratory in operation show that the laboratory is not an extension of existing facilities at the hatchery, but rather the construction of a complete new facility on land made available by the hatchery. Moreover, the Bureau itself has recognized the need for specific construction appropriations for both new construction and major improvement of facilities through its use of construction funds in fiscal years 1959 and 1961 to convert the fish hatchery at La Crosse into a fish control laboratory and through its use of construction funds in fiscal year 1964 to complete the construction work at the Warm Springs Laboratory.

Accordingly, we believe that the Bureau should have requested a specific construction appropriation from the Congress to build the new laboratory facilities and that the failure to make this request and the decision to use MIR funds to finance the new construction resulted in a violation of both 41 U.S.C. 12 and 31 U.S.C. 665(a).

Construction of new facilities in Region 3

From January 1, 1960, through December 31, 1964, the Bureau improperly used about \$111,000 of MIR funds to construct a number of new facilities in Region 3 without obtaining specific congressional approval. This situation also occurred primarily because of the Bureau's interpretation that MIR funds were available to construct such facilities, and it resulted in a violation of 41 U.S.C. 12 and 31 U.S.C. 665(a).

In our prior report to the Commissioner of Fish and Wildlife, United States Fish and Wildlife Service (B-118610, July 14, 1961), we reported that the Bureau's Region 3 had used \$11,923 of MIR funds and other funds in converting fish cultural facilities at La Crosse, Wisconsin, into a fish control laboratory. After we discussed this matter with the Chief, Branch of Budget and Finance, the appropriate adjustments were made to the funds affected.

Our current review disclosed that the Bureau's Region 3 continued to improperly use MIR funds for construction of new facilities as follows:

<u>Expenditure for</u>	<u>Amount of MIR appropriated funds used</u>	<u>Date of contract</u>	<u>Charged to appropriation for fiscal year</u>
1. Metal shop and laboratory building Gavins Point, South Dakota	\$20,884	6-29-62	1962
Finish above building	9,980	8- 9-62	1963
2. Dam, Seney, Michigan	13,950 ^a	4- 2-63	1963
3. Metal shop building, Sand Lake Refuge, South Dakota	8,978	12-23-63	1964
4. Pumping station, Guttenberg, Iowa	10,949	4- 9-64	1964
5. Metal lodging and boat storage building, Leech Lake, Minnesota	6,453 ^b	6-30-64	1964
	<u>\$71,194</u>		

^a An additional \$19,050 of Accelerated Public Works Funds was used to construct the dam.

^b An additional \$3,000 of Management of National Wildlife Refuges funds was used to construct the metal lodging and boat storage building.

In addition, our review disclosed that the Bureau used \$39,791 of MIR funds designated by the Bureau for rehabilitation purposes to construct four new garages ranging in cost from \$9,280 to \$10,986 in Region 3 during fiscal years 1960 and 1961.

Sections of the Bureau's Administrative Manual dated January 17 and March 10, 1961, provide that the construction of new features or the major repair, rehabilitation, or restoration of existing features at each installation of the Bureau, estimated to cost \$5,000 or more or aggregating \$5,000 or more in the same fiscal year, are to be programmed from development (construction) funds. The Bureau's regulations do not authorize the expenditure of funds for replacement of garages costing \$5,000 or more with MIR funds designated for rehabilitation purposes or the construction of temporary-type buildings costing \$5,000 or more with MIR funds.

Shortly after issuance of the above regulations, the Bureau's Assistant Director, Administration, in a memorandum to the Regional Director, Region 3, dated April 10, 1961, discussed the Bureau's authority to use MIR funds for construction in view of our finding relating to the conversion of the fish cultural facilities at La Crosse and stated:

"*** certain items of construction are budgeted and accomplished under the Construction appropriation one time and under the Management and Investigations of Resources appropriation another time. Bureau appropriations are available for the 'maintenance and improvement of *** buildings and other facilities' (FWS administrative provisions, annual appropriation Acts) and this permits use of non-construction funds for minor construction, equipment and the like. However, the controlling feature is whether there is a specific construction appropriation for a particular project or station at the time the obligation is incurred."

The Assistant Director's memorandum, when considered in light of the administrative regulations, appears to have added to the confusion as to the circumstances under which regional officials may use MIR funds for new construction. Moreover, our review disclosed that at two locations--Gavins Point and Sand Lake--specific construction funds were allotted for the same years in which new facilities were constructed with MIR funds. Consequently, it appeared at the time of our review that some confusion still existed among regional officials as to what constituted major and minor construction and as to the availability of MIR funds for construction purposes.

In commenting on the use of MIR funds for construction purposes, the Regional Director advised us that Region 3 officials had always believed that replacement of buildings could be accomplished with MIR funds which the Bureau designated as being available for rehabilitation purposes and that buildings of a temporary nature, such as the one at Leech Lake, could be constructed with MIR funds. With reference to the rest of the specific projects constructed, the Regional Director stated that the Bureau's Washington officials knew of, and approved the construction of, the temporary-type building at Gavins Point with MIR funds and the replacement of garages with MIR funds designated for rehabilitation purposes. He added that the use of MIR funds at Seney, Sand Lake, and Guttenberg had been due to faulty mechanics in obtaining funds, inadequate planning, or bad judgment.

We believe that the Bureau's use of MIR funds to construct buildings, a dam, a pumping station, and garages in Region 3 was improper because the Bureau did not obtain authorization for construction from the Congress and did not otherwise disclose to the

Congress its intent to use MIR funds for new construction. Accordingly, the Bureau's actions in these instances also resulted in violations of 41 U.S.C. 12 and 31 U.S.C. 665(a).

Department comments and our conclusion

We brought these matters to the attention of the Department of the Interior in May 1965 and proposed that the Secretary of the Interior, in accordance with the requirements of 31 U.S.C. 665(i), report to the President through the Director, Bureau of the Budget, and to the Congress all pertinent facts relating to the violations of the Anti-Deficiency Act resulting from the use of MIR funds to construct a National Fish Control Laboratory in Warm Springs, Georgia, and various other buildings and projects in Region 3. We also proposed that the Secretary require the Director, Bureau of Sport Fisheries and Wildlife, to issue appropriate instructions to all regional officials stressing the need for obtaining specific construction funds for all new construction and major improvements and repairs as required by 41 U.S.C. 12.

In March 1966 (see app. II) the Department, in commenting on the construction of the fish control laboratory at Warm Springs, advised us that the record showed conclusively that the Senate sponsors were aware that the achievement of more extensive research at Warm Springs required the construction of additional facilities. The Department stated that the Conference Committee on the fiscal year 1962 appropriation bill had requested a rough breakdown of the \$210,000 added to the appropriation bill by the Senate, according to construction, salaries, and equipment. Without the benefit of detailed engineering plans and prior to solicitation of competitive bids, the Bureau provided the Committee with a statement which indicated that the construction of additional facilities would cost \$130,000. However, when bids were obtained it was found that the required facilities would cost \$184,000.

The Department further stated that it had construed the governing intent of the Senate Committee and later the Conference Committee to be the extension of the research work at Warm Springs, including the construction of those facilities necessary to achieve that objective, and that, had the Warm Springs project not been construed in this manner, the Department would have undertaken the formality of obtaining the necessary reprogramming clearance from the Congress.

Regarding the Department's comment that the Senate sponsors and the Committee conferees knew that MIR funds would be used for construction of new facilities, we can find no such record in the legislative history of the appropriation acts. Our review of the appropriation acts for fiscal years 1962 and 1963 and the related hearings and committee reports showed that the appropriation committees of the Congress were advised that available facilities at the Warm Springs National Fish Hatchery would be extended to accommodate the fish control research work, but no reference was made to the construction of a new and separate facility.

In response to our request for a copy of the document which the Department stated had been provided the Conference Committee on the fiscal year 1962 appropriation bill, Department representatives furnished us with a copy of a document but advised that no formal record of the transmission of the document to the Committee was available in their files. The document contains the following statement:

"It is planned to make use of existing facilities at the Warm Springs National Fish Hatchery which will permit prompt initiation of research activities. Extension of these available facilities will provide for expansion of the studies in subsequent years."

The document also contained the estimate that about \$130,000 would be required to extend laboratory, office, and fish-holding facilities.

Contrary to the information contained in the document, we believe that the laboratory is not an extension of existing facilities at the hatchery but rather the construction of a complete new facility on land furnished by the hatchery, as evidenced by the physical and organizational separation of the laboratory and hatchery and the nature of the construction work necessary to place the laboratory in operation. Moreover, the Bureau's actions in this instance are not consistent with the Bureau's use of construction funds in fiscal years 1959 to 1961 to convert a fish hatchery at La Crosse into a fish control laboratory and in fiscal year 1964 to complete supplemental construction work at the Warm Springs Laboratory.

The Department has advised us that it is the Bureau's view that MIR funds, pursuant to the administrative provisions of the annual appropriation acts, are available for construction incidental to the achievement of the various project purposes. Accordingly, MIR funds are used for the construction of such facilities as dams, pumping stations, shop buildings, garages, and boat housing. The Department stated that the basic question involved in these instances was whether the Congress, in appropriating money for research projects, understood that such projects in fact require certain physical facilities without which the research cannot be achieved and that funds appropriated may be utilized to construct such facilities. The Department pointed out that this question had been discussed in these terms during the 1967 appropriation hearings before the Subcommittee on Department of the Interior

and Related Agencies of the House Committee on Appropriations and that efforts were being made to obtain clarifying language which would avoid future confusion.

We do not agree with the view expressed in the Department's comments that the use of MIR funds for the construction necessary to achieve project purposes is authorized within the meaning of the administrative provisions of the annual appropriation acts. Our Office has consistently taken the position that such authority can stem only from a clear expression of the intent of the Congress that funds appropriated for project purposes may be used for new construction. In this regard, the Bureau annually receives a specific appropriation for construction purposes in addition to the MIR appropriation.

The Department concluded that, under all circumstances, no conscious violation of 31 U.S.C. 665 had occurred. The Department agreed, however, that the Bureau's interpretation of MIR appropriation availability for incidental construction within defined limits should be the subject of specific congressional expression on a current basis. The Department further stated that it was more concerned with those parts of our report which underlined apparent lack of orderly management and confusion as to top Bureau policies and the application thereof at regional levels. In this regard, the Department noted that the Bureau was taking several positive steps to strengthen its management policies generally, giving special attention to the financial management area.

In the absence of a clear showing that the Congress intended that MIR funds be used for construction of the Warm Springs National Fish Control Laboratory and various buildings and projects in Region 3, we have no alternative but to conclude that the

Bureau's actions, whether conscious or not, did violate the provisions of 41 U.S.C. 12 requiring that construction funds be specifically appropriated therefor and of 31 U.S.C. 665(a) which prohibits involving the Government in any contract or other obligation for the payment of money in advance of appropriations made for that purpose. Accordingly, the Secretary of the Interior should take the necessary action in accordance with the requirements of 31 U.S.C. 665(i) to report through the Director, Bureau of the Budget, to the President and to the Congress all pertinent facts relating to the violations of the Anti-Deficiency Act.

We believe that the Bureau's efforts to obtain specific congressional expression on the availability of project funds for construction purposes should, in the future, help to avoid the improper use of MIR funds for construction purposes. However, in view of the noncompliance with statutory requirements disclosed by our review and the confusion which existed among regional officials as to the availability of MIR funds for construction purposes, we believe that there is a need for the Bureau to clarify its administrative regulations to provide for more orderly funding of future construction projects.

Recommendation to the Secretary of the Interior

We recommend that the Secretary of the Interior require the Director of the Bureau, in order to provide for more orderly funding of future construction projects, to establish clear-cut guidelines regarding the extent to which project funds can be used for incidental construction and to stress the need for obtaining specific construction funds for all construction work which does not clearly fall within the established guidelines.

APPENDIXES

PRINCIPAL OFFICIALS OF THE DEPARTMENT OF THE INTERIOR
THE UNITED STATES FISH AND WILDLIFE SERVICE, AND
THE BUREAU OF SPORT FISHERIES AND WILDLIFE
RESPONSIBLE FOR ADMINISTRATION OF THE
ACTIVITIES DISCUSSED IN THIS REPORT

		<u>Tenure of office</u>	
		<u>From</u>	<u>To</u>

DEPARTMENT OF THE INTERIOR

SECRETARY OF THE INTERIOR:

Stewart L. Udall	Jan. 1961	Present
Fred A. Seaton	June 1956	Jan. 1961

UNDER SECRETARY OF THE INTERIOR:

John A. Carver, Jr.	Jan. 1965	Present
James K. Carr	Jan. 1961	July 1964
Elmer F. Bennett	Sept. 1958	Jan. 1961

ASSISTANT SECRETARY OF THE INTERIOR--FISH
AND WILDLIFE AND PARKS (note a):

Stanley A. Cain	May 1965	Present
Frank P. Briggs	Mar. 1961	Feb. 1965
Ross L. Leffler	Jan. 1957	Jan. 1961

ASSISTANT SECRETARY FOR ADMINISTRATION:

Vacant	Dec. 1965	Present
D. Otis Beasley	Sept. 1952	Dec. 1965

UNITED STATES FISH AND WILDLIFE SERVICE

COMMISSIONER OF FISH AND WILDLIFE:

Clarence F. Pautzke	June 1961	Present
Arnie J. Suomela	Mar. 1957	Feb. 1961

PRINCIPAL OFFICIALS OF THE DEPARTMENT OF THE INTERIOR
THE UNITED STATES FISH AND WILDLIFE SERVICE, AND
THE BUREAU OF SPORT FISHERIES AND WILDLIFE
RESPONSIBLE FOR ADMINISTRATION OF THE
ACTIVITIES DISCUSSED IN THIS REPORT (continued)

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
<u>BUREAU OF SPORT FISHERIES AND WILDLIFE</u>		
DIRECTOR:		
John S. Gottschalk	Dec. 1964	Present
Daniel H. Janzen	Mar. 1957	Nov. 1964

^aTitle changed from Assistant Secretary of the Interior--Fish and Wildlife, effective June 4, 1965.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 1 1966

Mr. J. T. Hall, Jr.
Assistant Director
Civil Accounting and
Auditing Division
General Accounting Office
Washington, D. C. 20548

Dear Mr. Hall:

Two major issues are presented in your draft report on improper and unauthorized use of Management and Investigations of Resources funds for construction purposes, Bureau of Sport Fisheries and Wildlife. The first concerns the research project at Warm Springs, Georgia, and, more specifically, the construction component of that project. The second involves the extent to which construction activity deemed essential to the achievement of authorized research purposes can be financed from MIR appropriations without separate specific construction allowances.

In regard to the Warm Springs project, it should be noted first that, by action originating with the Senate Committee, the MIR appropriation request in Fiscal Years 1962 and 1963 was increased by \$210,000. The record shows conclusively that the Senate sponsors were aware that achievement of more extensive research at Warm Springs required the construction of additional facilities. When the item was before the Conference Committee for consideration, the Bureau was asked to supply a rough breakdown of the total of \$210,000 according to construction, salaries, equipment, etc. Without benefit of detailed engineering planning and prior to solicitation of competitive bids, the Bureau indicated that the construction of additional facilities would cost \$130,000. When bids were obtained it was found that the required facilities would cost \$184,000. Since the purposes of the entire project depended upon adequate facilities, the Bureau authorized the increased construction outlay.

We have construed the governing intent of the Senate Committee and later the Conference Committee to be the extension of this research project with financing of those construction facilities requisite to that objective. The Bureau's action was consistent with this intent; conversely a failure to provide the physical facilities would have defeated the intent. The Bureau statement which recited an estimate

APPENDIX II

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of \$130,000 for construction was nothing more than a very preliminary reckoning of cost. The appropriation made by the Congress was for a project result and not for the itemized line elements. Had the Warm Springs project not been construed as a unitized undertaking, we would have undertaken the formality of obtaining reprogramming clearance from the Committee with every reasonable prospect of approval.

The view that MIR appropriations are available for construction incidental to the achievement of the various project purposes specified therein has been fundamental in the Bureau's operations. In this philosophy is found the reasons for the use of MIR monies in the construction of such facilities as dams, pumping stations, shop buildings, garages, and boat housing. It has been the Bureau's position that construction of the foregoing facilities, accomplished with MIR funds, in the absence of specific construction funds, was authorized within the meaning of the administrative provisions of the Sport Fisheries and Wildlife annual appropriation act language which reads, in part, as follows:

"Appropriations and funds available to the Fish and Wildlife Service shall be available for * * * the maintenance and improvement of aquaria, buildings, and other facilities under the jurisdiction of the Fish and Wildlife Service and to which the United States has title, and which are utilized pursuant to law in connection with management and investigation of fish and wildlife resources." (Underscoring supplied)

Obviously, the efficacy of the Bureau's interpretation depends upon construction of the term "improvement". The Departmental financial managers recognize that this term is susceptible to a variety of definitions in accounting literature. To avoid future confusion, we have requested and the Bureau has made plain to the House Appropriations Committee the implications of the Bureau's interpretation and is working out clarifying language with the Committee staff as directed by the Chairman.

The question of temporary versus permanent construction, or purported ambiguities in the Bureau regulations, are not central to the problem. Nor do we believe that your interviews with one Regional Director brought the problem into representative focus. The basic question is whether Congress, in appropriating monies for research projects has clearly understood that such projects in fact require certain physical facilities without which the research cannot be achieved and hence has understood also that funds appropriated may be utilized in part for such facilities. Bureau management has relied upon an affirmative view on this proposition. As indicated above, the question has been raised in these terms in current appropriation hearings apparently because your draft report has been made available to the Committee

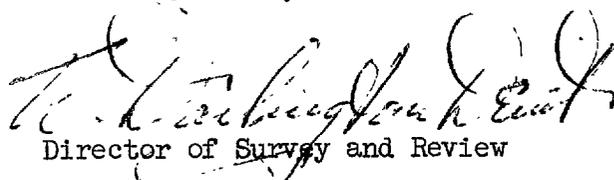
staffs. The discussion has been frank and Bureau witnesses have testified candidly as to the interpretation placed upon MIR appropriations insofar as incidental construction is concerned. The effort is being made to obtain clarifying language which will avoid any future confusion.

Your report makes much of the wording in Bureau regulations defining minor construction. While we would not argue that the regulations are without ambiguity and have not been variously interpreted in different levels in the Bureau, the fact remains that the regulation in question was designed only to govern an internal scheduling process and is unrelated to source of financing.

Under all the circumstances, we cannot conclude that any conscious violation of 31 USC 665(i) has occurred. We agree that the Bureau's interpretation of MIR appropriation availability for incidental construction within defined limits should be the subject of specific Congressional expression on a more current basis. Such expression is in the making.

The Department is even more concerned with those parts of your report disclosures which underline apparent lack of orderly management and confusion as to top Bureau policies and the application thereof at regional levels. The Bureau has taken several positive steps to strengthen its management policies generally and special attention is being given to the financial management area. Not the least of the items receiving special consideration at this time is the development of the Bureau accounting system for submission to the Comptroller General. This process, in itself, is compelling across-the-board clarification of financial practices.

Sincerely yours,



Director of Survey and Review